REMARKS

Claims 1-13, 26-30, 50-58, 66-70 and 77-121 are pending in this application. In the latest Office Action, Examiner rejected claims 6, 53, 55, 79, 81-82, 84-85, 89, 91-92, 94-95, 97-116, 119, and 121. This Office Action appears to be defective on several grounds. First, Examiner failed to reject or even address the approximately 42 remaining pending claims, including 9 of the 11 total independent claims. Specifically, the independent claims in this case are claims 1, 8, 26, 50, 56, 66, 77, 87, 97, 103, and 117; of those only claims 97 and 103 were specifically addressed in the Office Action. The unexamined claims are currently presented in unamended form in this Office Action, and any potential future rejection of these claims must be done in a non-Final Office Action. MPEP §706.07.

Of the claims that were rejected, the basis for rejection of certain claims provided is incoherent or simply missing. For instance, Examiner rejected claims 79, 81-82, 84-85, 89, 91-92, 94-95, 119, and 121 as unpatentable under 35 U.S.C. §103(a) in part based on Roy (US Patent 6,049,774), which is introduced for the first time in the present Office Action. However, the only explanation of Roy's relevance is the repeated assertion, "Roy teaches dynamic optimization for resource allocation in a market environment where goods and services are demanded by customers over time." However "dynamic optimization for resource allocation" is completely unrelated to the subject matter of the claimed invention, leaving Applicants completely in the dark as to Examiner's purported basis for rejection. Likewise, Examiner relies on Blinn (US Patent 5,999,914), another reference mentioned for the first time, in his rejection of claims 81, 91, and 121 under 35 U.S.C. §103(a). However, Examiner declines to identify the relevance of Blinn or indeed, give any reason at all for why it is being cited. These failures to identify even "the relevant teachings of the prior art relied

upon" are clearly improper. MPEP §706.02(j). On this basis alone, Examiner has failed to make a prima facie rejection of claims 79, 81-82, 84-85, 89, 91-92, 94-95, 119, and 121.

In addition, Examiner cites "Official Notice" in his rejection of dependent claims 97-102, 104-105, 107, 110-111, 113, and 116, but fails to identify the subject matter of which Official Notice is being taken or what element of the claims the Notice is being applied to, making it impossible for Applicants to meaningfully respond. Examiner also failed to reject any independent claims from which these claims depend, essentially leaving unrejected the base elements of these dependent claims. This makes no sense at all: if the independent claims are not rejected, then by definition, the dependent claims cannot be rejected. If these rejections are maintained, Applicants request that the Examiner first provide a complete basis for rejection of the respective independent claims, including properly identifying "the relevant teachings of the prior art relied upon" MPEP §706.02(j) in his rejection of all claim limitations. In addition, if Examiner relies on Official Notice, Applicants request that Examiner provide a reference and/or an affidavit proving that the matters of which the Examiner has taken Official Notice are "capable of such instant and unquestionable demonstration as to defy dispute," as required by MPEP 2144.03. For at least the reasons stated above, Examiner's rejection of claims 97-102, 104-105, 107, 110-111, 113, and 116 is traversed.

Examiner rejected remaining claim 6 under 35 U.S.C. §103(a) over O'Neil (US Patent 5,987,440) in view of Maeda (US Patent 5,377,095) and Shkedy (US Patent 6,260,024). Applicants respectfully traverse this rejection because none of the references, alone or in combination, disclose or suggest the "demand curve...generated based on real-time offers of the buyers" of claim 6. At best Maeda discloses a graph generated based on

"the actual sale...past price." (Maeda, 6:48-53) By definition "past actual sales" are not the same as real-time offers, and the claimed element is missing from O'Neil, Maeda, Shkedy and their combination. A demand curve based on past sales would be fixed, and would not provide a realtime view of how demand is changing at the time the featured item is being sold. The combination of O'Neil, Maeda, and Skedy merely suggest using a past demand curve in a sale. But because actual current demand in a group-buying sale can be radically different from past actual sales (e.g., for a feature item that is suddenly very scarce or popular but was previously of little interest to the buying public), this combination does not provide the usefulness of the claimed "demand curve...generated based on real-time offers of buyers."

Claims 53 and 55 similarly recite "a voting mechanism configured to receive the offers from the message receiver and transmitter and calculate a flash demand curve using the offers." Nowhere in the cited references is a "voting mechanism" disclosed or suggested, and the flash demand curve calculated based on offers claimed, as described above, is also missing. Applicants respectfully traverse these rejections. Examiner rejected claims 103, 106, 108-109, 112, and 114-115 as anticipated by O'Neil under 35 U.S.C. §102(e). Applicants respectfully traverse this rejection because the reference does not disclose or suggest, "displaying real-time messages responsive to a voting mechanism for soliciting input from potential buyers in the online group-buying sale related to the product" as claimed.

In sum, Applicants respectfully submit that claims as presented herein are patentably distinguishable over the cited references. Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them. In addition,

Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
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Date: 2/2/05 By: _____

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